

FIRST DIVISION

[G.R. No. 117190. January 2, 1997]

JACINTO TANGUILIG doing business under the name and style J.M.T. ENGINEERING AND GENERAL MERCHANDISING, petitioner, vs. COURT OF APPEALS and VICENTE HERCE JR., respondents.

DECISION

BELLOSILLO, J.:

This case involves the proper interpretation of the contract entered into between the parties.

Sometime in April 1987 petitioner Jacinto M. Tanguilig doing business under the name and style *J. M. T. Engineering and General Merchandising* proposed to respondent Vicente Herce Jr. to construct a windmill system for him. After some negotiations they agreed on the construction of the windmill for a consideration of ₱60,000.00 with a one-year guaranty from the date of completion and acceptance by respondent Herce Jr. of the project. Pursuant to the agreement respondent paid petitioner a down payment of ₱30,000.00 and an installment payment of ₱15,000.00, leaving a balance of ₱15,000.00.

On 14 March 1988, due to the refusal and failure of respondent to pay the balance, petitioner filed a complaint to collect the amount. In his *Answer* before the trial court respondent denied the claim saying that he had already paid this amount to the San Pedro General Merchandising Inc. (SPGMI) which constructed the deep well to which the windmill system was to be connected. According to respondent, since the deep well formed part of the system the payment he tendered to SPGMI should be credited to his account by petitioner. Moreover, assuming that he owed petitioner a balance of ₱15,000.00, this should be offset by the defects in the windmill system which caused the structure to collapse after a strong wind hit their place.^[1]

Petitioner denied that the construction of a deep well was included in the agreement to build the windmill system, for the contract price of ₱60,000.00 was solely for the windmill assembly and its installation, exclusive of other incidental materials needed for the project. He also disowned any obligation to repair or reconstruct the system and insisted that he delivered it in good and working condition to respondent who accepted the same without protest. Besides, its collapse was attributable to a typhoon, a *force majeure*, which relieved him of any liability.

In finding for plaintiff, the trial court held that the construction of the deep well was not part of the windmill project as evidenced clearly by the letter proposals submitted by petitioner to respondent.^[2] It noted that "[i]f the intention of the parties is to include the construction of the deep well in the project, the same should be stated in the proposals. In the absence of such an agreement, it could be safely concluded that the construction of the deep well is not a part of the project undertaken by the plaintiff."^[3] With respect to the repair of the windmill, the trial court found that "there is no clear and convincing proof that the windmill system fell down due to the defect of the construction."^[4]

The Court of Appeals reversed the trial court. It ruled that the construction of the deep well was included in the agreement of the parties because the term "deep well" was mentioned in both proposals. It also gave credence to the testimony of respondent's witness Guillermo Pili, the proprietor of SPGMI which installed the deep well, that petitioner Tanguilig told him that the cost of constructing the deep well would be deducted from the contract price of ₱60,000.00. Upon these premises the appellate court concluded that respondent's payment of ₱15,000.00 to SPGMI should be applied to

his remaining balance with petitioner thus effectively extinguishing his contractual obligation. However, it rejected petitioner's claim of *force majeure* and ordered the latter to reconstruct the windmill in accordance with the stipulated one-year guaranty.

His motion for reconsideration having been denied by the Court of Appeals, petitioner now seeks relief from this Court. He raises two issues: *firstly*, whether the agreement to construct the windmill system included the installation of a deep well and, *secondly*, whether petitioner is under obligation to reconstruct the windmill after it collapsed.

We reverse the appellate court on the first issue but sustain it on the second.

The preponderance of evidence supports the finding of the trial court that the installation of a deep well was not included in the proposals of petitioner to construct a windmill system for respondent. There were in fact two (2) proposals: one dated 19 May 1987 which pegged the contract price at P87,000.00 (Exh. "1"). This was rejected by respondent. The other was submitted three days later, i.e., on 22 May 1987 which contained more specifications but proposed a lower contract price of P60,000.00 (Exh. "A"). The latter proposal was accepted by respondent and the construction immediately followed. The pertinent portions of the first letter-proposal (Exh. "1") are reproduced hereunder -

In connection with your Windmill System and Installation, we would like to quote to you as follows:

One (1) Set - Windmill suitable for 2 inches diameter deepwell, 2 HP, capacity, 14 feet in diameter, with 20 pieces blade, Tower 40 feet high, including mechanism which is not advisable to operate during extra-intensity wind. Excluding cylinder pump.

UNIT CONTRACT PRICE P87,000.00

The second letter-proposal (Exh. "A") provides as follows:

In connection with your Windmill system Supply of Labor Materials and Installation, operated water pump, we would like to quote to you as follows -

One (1) set - Windmill assembly for 2 inches or 3 inches deep-well pump, 6 Stroke, 14 feet diameter, 1-lot blade materials, 40 feet Tower complete with standard appurtenances up to Cylinder pump, shafting U.S. adjustable International Metal.

One (1) lot - Angle bar, G. I. pipe, Reducer Coupling, Elbow Gate valve, cross Tee coupling.

One (1) lot - Float valve.

One (1) lot - Concreting materials foundation.

F. O. B. Laguna

Contract Price P60,000.00

Notably, nowhere in either proposal is the installation of a deep well mentioned, even remotely. Neither is there an itemization or description of the materials to be used in constructing the deep well. There is absolutely no mention in the two (2) documents that a deep well pump is a component of the proposed windmill system. The contract prices fixed in both proposals cover only the features specifically described therein and no other. While the words "*deep well*" and "*deep well pump*" are mentioned in both, these do not indicate that a deep well is part of the windmill system. They merely describe the type of deep well pump for which the proposed windmill would be suitable. As correctly pointed out by petitioner, the words "*deep well*" preceded by the prepositions "*for*" and "*suitable for*" were meant only to convey the idea that the proposed windmill would be appropriate for a deep well pump with a diameter of 2 to 3 inches. For if the real intent of petitioner was to include a deep well in

the agreement to construct a windmill, he would have used instead the conjunctions "*and*" or "*with*." Since the terms of the instruments are clear and leave no doubt as to their meaning they should not be disturbed.

Moreover, it is a cardinal rule in the interpretation of contracts that the intention of the parties shall be accorded primordial consideration^[5] and, in case of doubt, their contemporaneous and subsequent acts shall be principally considered.^[6] An examination of such contemporaneous and subsequent acts of respondent as well as the attendant circumstances does not persuade us to uphold him.

Respondent insists that petitioner verbally agreed that the contract price of ₱60,000.00 covered the installation of a deep well pump. He contends that since petitioner did not have the capacity to install the pump the latter agreed to have a third party do the work the cost of which was to be deducted from the contract price. To prove his point, he presented Guillermo Pili of SPGMI who declared that petitioner Tanguilig approached him with a letter from respondent Herce Jr. asking him to build a deep well pump as "part of the price/contract which Engineer (Herce) had with Mr. Tanguilig."^[7]

We are disinclined to accept the version of respondent. The claim of Pili that Herce Jr. wrote him a letter is unsubstantiated. The alleged letter was never presented in court by private respondent for reasons known only to him. But granting that this written communication existed, it could not have simply contained a request for Pili to install a deep well; it would have also mentioned the party who would pay for the undertaking. It strains credulity that respondent would keep silent on this matter and leave it all to petitioner Tanguilig to verbally convey to Pili that the deep well was part of the windmill construction and that its payment would come from the contract price of ₱60,000.00.

We find it also unusual that Pili would readily consent to build a deep well the payment for which would come supposedly from the windmill contract price on the mere representation of petitioner, whom he had never met before, without a written commitment at least from the former. For if indeed the deep well were part of the windmill project, the contract for its installation would have been strictly a matter between petitioner and Pili himself with the former assuming the obligation to pay the price. That it was respondent Herce Jr. himself who paid for the deep well by handing over to Pili the amount of ₱15,000.00 clearly indicates that the contract for the deep well was not part of the windmill project but a separate agreement between respondent and Pili. Besides, if the price of ₱60,000.00 included the deep well, the obligation of respondent was to pay the entire amount to petitioner without prejudice to any action that Guillermo Pili or SPGMI may take, if any, against the latter. Significantly, when asked why he tendered payment directly to Pili and not to petitioner, respondent explained, rather lamely, that he did it "because he has (sic) the money, so (he) just paid the money in his possession."^[8]

Can respondent claim that Pili accepted his payment on behalf of petitioner? No. While the law is clear that "payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it,"^[9] It does not appear from the record that Pili and/or SPGMI was so authorized.

Respondent cannot claim the benefit of the law concerning "payments made by a third person."^[10] The Civil Code provisions do not apply in the instant case because no creditor-debtor relationship between petitioner and Guillermo Pili and/or SPGMI has been established regarding the construction of the deep well. Specifically, witness Pili did not testify that he entered into a contract with petitioner for the construction of respondent's deep well. If SPGMI was really commissioned by petitioner to construct the deep well, an agreement particularly to this effect should have been entered into.

The contemporaneous and subsequent acts of the parties concerned effectively belie respondent's assertions. These circumstances only show that the construction of the well by SPGMI was for the sole account of respondent and that petitioner merely supervised the installation of the well because the windmill was to be connected to it. There is no legal nor factual basis by which this Court can impose upon petitioner an obligation he did not expressly assume nor ratify.

The second issue is not a novel one. In a long line of cases^[11] this Court has consistently held that in order for a party to claim exemption from liability by reason of fortuitous event under Art. 1174 of the Civil Code the event should be the sole and proximate cause of the loss or destruction of the object of the contract. In *Nakpil vs. Court of Appeals*,^[12] four (4) requisites must concur: (a) the cause of the breach of the obligation must be independent of the will of the debtor; (b) the event must be either unforeseeable or unavoidable; (c) the event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and, (d) the debtor must be free from any participation in or aggravation of the injury to the creditor.

Petitioner failed to show that the collapse of the windmill was due solely to a fortuitous event. Interestingly, the evidence does not disclose that there was actually a typhoon on the day the windmill collapsed. Petitioner merely stated that there was a "strong wind." But a strong wind in this case cannot be fortuitous - unforeseeable nor unavoidable. On the contrary, a strong wind should be present in places where windmills are constructed, otherwise the windmills will not turn.

The appellate court correctly observed that "given the newly-constructed windmill system, the same would not have collapsed had there been no inherent defect in it which could only be attributable to the appellee."^[13] It emphasized that respondent had in his favor the presumption that "things have happened according to the ordinary course of nature and the ordinary habits of life."^[14] This presumption has not been rebutted by petitioner.

Finally, petitioner's argument that private respondent was already in default in the payment of his outstanding balance of ₱15,000.00 and hence should bear his own loss, is untenable. In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him.^[15] When the windmill failed to function properly it became incumbent upon petitioner to institute the proper repairs in accordance with the guaranty stated in the contract. Thus, respondent cannot be said to have incurred in delay; instead, it is petitioner who should bear the expenses for the reconstruction of the windmill. Article 1167 of the Civil Code is explicit on this point that if a person obliged to do something fails to do it, the same shall be executed at his cost.

WHEREFORE, the appealed decision is MODIFIED. Respondent VICENTE HERCE JR. is directed to pay petitioner JACINTO M. TANGUILIG the balance of ₱15,000.00 with interest at the legal rate from the date of the filing of the complaint. In return, petitioner is ordered to "reconstruct subject defective windmill system, in accordance with the one-year guaranty"^[16] and to complete the same within three (3) months from the finality of this decision.

SO ORDERED.

Padilla, (Chairman), Vitug, Kapunan, and Hermosisima, JJ., concur.

^[1] TSN, 20 December 1988, pp. 10-12.

^[2] Exh. "A" and Exh. "1."

^[3] *Rollo*, p. 36.

^[4] *Id.*, p. 37.

^[5] *Kasilag v. Rodriguez*, 69 Phil. 217 (1939).

^[6] Art. 1371, New Civil Code; *GSIS v. Court of Appeals*, G.R. No. 52478, 30 October 1986, 145 SCRA 311; *Serrano v. Court of Appeals*, No. L-46357, 9 October 1985, 139 SCRA 179.

^[7] TSN, 13 April 1989, pp. 18-19.

^[8] TSN, 13 April 1989, p. 22.

^[9] Art. 1240, New Civil Code.

[\[10\]](#) Arts. 1236 and 1237, New Civil Code .

[\[11\]](#) *Nakpil v. Court of Appeals*, Nos. L-47851, L-47863, L-47896, 3 October 1986, 144 SCRA 596; *National Power Corporation v. Court of Appeals*, G.R. Nos. L-47379 and 47481, 16 May 1988, 161 SCRA 334; *National Power Corporation v. Court of Appeals*, G.R. Nos. 103442-45, 21 May 1993, 222 SCRA 415.

[\[12\]](#) See Note 11.

[\[13\]](#) *Rollo*, p. 44.

[\[14\]](#) Sec. 3, par. (y), Rule 131, Revised Rules on Evidence.

[\[15\]](#) Art. 1169, last par., New Civil Code.

[\[16\]](#) See CA Decision, p. 7; *Rollo*, p. 27.